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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/616,674   | 07/10/2003  | Carl A. Forest       | 13194.102US         | 2594             |
| 24283  | 7590        | 04/02/2007           | EXAMINER            |                  |
| PATTON BOGGS LLP<br>1801 CALIFORNIA STREET<br>SUITE 4900<br>DENVER, CO 80202 |             |                      | EBRAHIM, NABILA G   |                  |
|  |             |                      | ART UNIT            | PAPER NUMBER     |
|  |             |                      | 1618                |                  |
| SHORTENED STATUTORY PERIOD OF RESPONSE                                       |             | MAIL DATE            | DELIVERY MODE       |                  |
| 3 MONTHS   |             | 04/02/2007           | PAPER               |                  |

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 10/616,674             | FOREST CARL         |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | Nabila G. Ebrahim      | 1618                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 1/18/07.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-6 and 9-30 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-6 and 9-30 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

Receipt of Applicant's remarks and amendments to the claims dated 1/18/07 is acknowledged.

***Status of Claims***

Claims 1-6, and 9-30 are pending in the application.

Claims 6, and 7 were cancelled.

***Status of Office Action:*** Final***Claim Rejections - 35 USC § 112***

1. In view of Applicant arguments the rejections of claims 2-9 under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement is herein withdrawn.
2. In view of Applicant arguments and claim amendments, the rejection of claims 2-7 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement is herein withdrawn.

***Claim Rejections - 35 USC § 102***

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

claim 1 remains rejected under 35 U.S.C. 102(b) as being anticipated by Sundram et al. US 20020034562 (Sundram) for the reasons set forth in the office action mailed 9/18/06.

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 8-30 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Sundram et al. US 20020034562 in view of McCleary US 6,579,866 (McCleary), Hastings US 5626849 (Hastings), and further in view of Dente US 6277396 (Dente) for the reasons set forth in the office action mailed 9/18/06.

***Double Patenting***

Claims 1-5, 8, 9, 12-23, and 25-30 remain rejected on the ground of nonstatutory double patenting over claims 1-9, and 14-24 of U. S. Patent No. 6579866 (McCleary) for the reasons set forth in the office action dated 9/18/06.

The rejection of claims 1-5, 8, 9, 11, 12-23, 25-30 as provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over amended claims 1-7, 9, 14-19, 21-25, 27, 29-32 of copending Application No. 10/987108 is herein withdrawn in view of the arguments and also in view of canceling claims 1-8 of copending application 10/987108.

***Response to Arguments***

2. Applicant's arguments filed 1/18/07 have been fully considered but they are not persuasive. Applicant argues that:

***Claim Rejections - 35 USC § 102***

a. Sundram relates to a different invention and does not teach the combination of a salad dressing and a weight loss composition.

To respond: Sundram teaches a composition:

1) The composition can be used in salad dressing [0030, 0092, and claim 26] and,

2) the composition causes weight loss [0030], the recitation of "a weight loss supplement" is a functional element which does not differentiate the instant claim from the prior art on the record because the prior art discloses that the composition causes weight loss, which means that there is a weight loss supplement ingredient in the composition. These are the two elements recited in instant claim 1. In addition, it is noted that "a weight loss salad dressing" is recited in the preamble of the claim and is not of weight in examining the claim.

***Claim Rejections - 35 USC § 103***

b. McCleary teaches a weight loss supplement, but does not mention its use in salad dressing or any other food.

To respond: Examiner agrees that McCleary does not teach the use of weight loss supplement in a salad dressing. However, McCleary teaches that oral administration is accomplished by ingesting the composition, preferably with water. The orally administered composition of this invention can be in any conventional form including, e.g., capsules (regular or compressed), tablets, chewable wafers, elixirs, powders, granules, suspensions in water or non-aqueous media, sachets, etc. powder, tablet, and chewable wafer forms are most

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preferred (col. 6, lines 66+ bridging to col. 7, lines 1+). Though the disclosure does not explain how powders, for example, are administered, it does not exclude adding it on any food, water, or drink. It is also noted that, Sundram does teach the use of dietary supplement on salad dressing.

c. Hastings does not incorporate the weight loss composition into salad dressing.

To respond: Hastings was introduced to the rejection for the use of guarana and/or mahuang. However, Hasting teaches that the composition can be incorporated into different kinds of foods and Sundram teaches the use of dietary supplement into Salad dressing.

d. Dente does not mention the use of fat burning dietary supplement in a salad dressing.

To respond: Dente was used as a secondary reference because the reference disclosed Garcinia cambogia as a source of hydrocitric acid. The composition is ingestable and may be added to liquids to form solutions (col. 3, lines 50+). In the mean time Sundram teaches the use of dietary supplement in a salad dressing.

e. The suggestion to put a weight loss supplement in a salad dressing only comes from the prior art and not any of the references or the combination thereof.

To respond: Sundram teaches the use of a composition that causes weight loss in a salad dressing. McCleary, Hasting, and Dente teach ingestable weight loss dietary supplement that can be added to food or drinks. Ingestion is the same regardless of the source of food that carry the composition. Note that the

compositions in these references are disclosed in the form of a powder, it is not expected that the powder would be used by itself unless mixed with a liquid or food. If Applicant believes that salad dressing is specifically having unexpected results as a carrier of the composition, it is the burden of the Applicant to show these unexpected results in data to be considered.

***Double Patenting***

f. The double patenting rejection is traversed because McCleary was prevented from presenting claims in the reference corresponding to those in the present application since it was not possible for McCleary to disclose anything about combining the weight loss supplement with a salad dressing. To respond: this argument is not found persuasive because McCleary discloses the same compositions and methods, for example, hydroxycitric acid, arnitine, biotin; one or more gluconeogenic substrates selected from the group consisting of aspartate, lactate, glycerol, and a gluconeogenic amino acid or alphaketo analogue thereof; eicosapentanoic acid. And the same methods (method of losing weight, method of losing weight for a human following a dietary regiment involving, a method for a human who donate blood so as to produce a fall in serum ferritin levels, and a method for a human follow a stress reduction program). Adding the same composition to a salad dressing would not differentiate the instant claims from McCleary because the reference disclosed the same composition recited in the instant claims in the form of chewable wafer or a powder, the powder is expected to be added to ingestable food or drinks.

Note that the salad dressing is not considered an active ingredient needed for weight loss.

***Conclusion***

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nabila G. Ebrahim whose telephone number is 571-272-8151. The examiner can normally be reached on 8:00AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hartley can be reached on 571-272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Nabila Ebrahim, M.D.  
3/24/07



MICHAEL G. HARTLEY  
SUPERVISORY PATENT EXAMINER